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From: Turley, Jennifer

Sent: Wed 1/29/2014 3:26:34 PM

Subject: Water Law News for January 29, 2014



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for January 29, 2014

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Drilling

Wyoming Providing Drinking Water Cisterns For Residents Near Contaminated Gas Field

Residents near a contaminated gas field in Pavillion, Wyo., have until Feb. 23 to sign up to receive a drinking water cistern provided by the state, Gov. Matt Mead (R) has announced. ...

Drinking Water

Senate Bill Would Require Inspections, Bolster State Oversight of Chemical Storage

Chemical storage facilities would face new federal construction and leak protection standards and would have to undergo inspections every three to five years under a Senate bill introduced Jan. 28....

Mining

Senate Bill on Critical Minerals Gets Support From Industries, States, Administration

Groups ranging from auto and semiconductor manufacturing associations to state mining authorities urged senators to pass a bill that would ensure a supply of specific minerals essential for national security and energy technologies....

Water Pollution

Environmental Groups Say Proposed Water Permitting Rules for Iowa CAFOs Fall Short

Three environmental groups released a copy of draft rules for the permitting of livestock operations in Iowa and maintained that they don't go far enough to protect waters in the state....

Water Resources

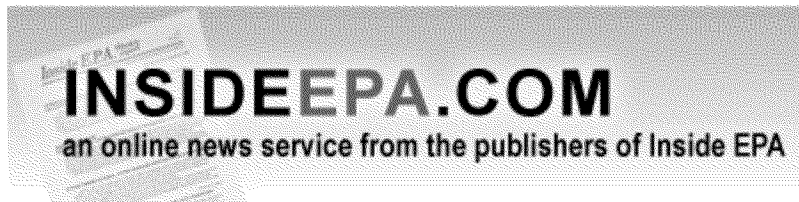
Align Water Management With Watersheds, Not Political Boundaries, B.C. Report Says

British Columbia should adopt a new model for freshwater management and policies, including improved accountability for decision makers, according to a report by the POLIS Project on Ecological Governance at the University of Victoria....

Water Resources

California Releases Five-Year Action Plan To Better Manage Scarce Water Resources

California officials have released a five-year plan to better manage the state's scarce water resources....



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Farm Bill Preserves EPA's Water Policies For Logging Roads, Spray Limits

The consensus Farm Bill, released after marathon conference negotiations Jan. 27 and expected to be approved by Congress later this week, preserves EPA's current Clean Water Act (CWA) policies for permitting pesticide spraying and limiting stormwater discharges from forest roads despite some earlier efforts to curb the agency's approaches.

Industry Previews Legal Attack On EPA's Proposed Water Standards Rule

A host of industry groups are signaling in comments on EPA's proposed update to its water quality standards (WQS) rules that if the agency finalizes the regulation as proposed it will face lawsuits attacking many provisions as exceeding federal authority under the Clean Water Act (CWA).

Key Court Appears Open To Subjecting CWA Jurisdiction Findings To Review

A key appeals court at recent oral arguments seemed receptive to industry claims that agency determinations that waterbodies are subject to Clean Water Act (CWA) regulation are reviewable -- a step that courts have long refused to take, but which the circuits have yet to address in the wake of the Supreme Court's ruling in *Sackett v. EPA* when it opened some pre-enforcement regulatory determinations to judicial review.

Greenwire_{Greenwire}

WATER POLLUTION:

Manchin unveils bill to expand oversight of chemical facilities

Jason Plautz, E&E reporter

Published: Tuesday, January 28, 2014

As his state continues to deal with the fallout of this month's chemical spill, West Virginia Sen. Joe Manchin today introduced legislation to increase oversight of aboveground chemical storage facilities.

Manchin (D) was joined by West Virginia's senior senator, Democrat Jay Rockefeller, and Senate Environment and Public Works Chairwoman Barbara Boxer (D-Calif.) in introducing the "Chemical Safety and Drinking Water Protection Act" ([S. 1961](#)).

The measure would require states to set minimum standards for chemical storage facilities and require regular inspections of aboveground tanks, which are largely unregulated.

"No West Virginian or American should have to worry about the contamination of their water supply from a chemical spill," Manchin said. "This common-sense bill makes sure all chemicals are appropriately monitored and protects the safety of the water we consume and use every day."

Boxer said yesterday that the bill would be the subject of a hearing next week in the water subcommittee, the first of two the EPW committee will hold on chemical security. She also said she hoped to mark up the bill "as soon as possible" after the hearing.

The bill comes after a Jan. 9 chemical spill at a Freedom Industries Inc. facility along the Elk River near Charleston that contaminated drinking water with the coal-scrubbing chemical 4-methylcyclohexane methanol (MCHM) and an extender known as "PPH stripped." The spill left 300,000 people without tap water for days.

The bill would give states more authority to regulate and inspect aboveground storage tanks, putting them on par with underground tanks. State programs would have to meet minimum requirements, including design standards, leak detection, spill control, inventory control, staff training and an emergency response plan.

Facilities would also have to notify regulators of the identity and potential toxicity of its chemicals and would be subject to regular inspections every three years if near a drinking water source, or every five years otherwise.

States would be allowed to recoup the costs for a spill cleanup, with the owners and operators of a facility being responsible under the bill.

The spill has prompted new attention to the often lax regulations surrounding chemical facilities and increased calls for Congress or the administration to take action to make plants safer. Similar legislation has not been introduced in the House, where the state delegation and majority have been less enthusiastic about increasing regulation in light of the spill.

Freedom revises leak estimate

Yesterday, Freedom Industries increased its estimate for the amount of MCHM/PPH blend that leaked from its storage tank to 10,000 gallons, although it's not known how much spilled into the Elk River.

In a letter to the West Virginia Department of Environmental Protection, the company also said it had recovered 1,272 gallons of the chemical through absorbent booms and control devices at the site of the spill.

DEP Secretary Randy Huffman said the state was not making any judgment about the accuracy of the estimate and was still reviewing the calculation as part of its investigation into the spill.

"This new calculation does not change any of our protocols in dealing with this spill, nor does it affect the ongoing remediation efforts," Huffman said. "Our actions have never been dependent on what Freedom has reported to us. From the start, we have acted aggressively to contain the spill and remediate the site."

Reporter Nick Juliano contributed.

DROUGHT:

Calif.'s 5-year plan emphasizes water conservation

Anne C. Mulkern, E&E reporter

Published: Tuesday, January 28, 2014

California must make water conservation "a way of life," the state said yesterday as it released a five-year plan for managing supplies that arrived as a record-breaking drought underscores the state's challenges.

The [California Water Action Plan](#) listed a number of priorities and put conservation at the top, with the document stating that "there is more that can be done and all

Californians must embrace this effort."

The blueprint also said the state will look to improve its ability to store water and will manage groundwater more effectively. Water recycling also must be enhanced, it said. And California leaders pledged to balance the competing demands of the Sacramento-San Joaquin Delta, which supplies water to 25 million Californians -- two-thirds of the state's population -- and 3 million acres of farmland.

"It is imperative that we do everything possible to mitigate the effects of the drought," Gov. Jerry Brown (D) said in his State of the State speech last week, words that were quoted at the top of the water plan. "We need everyone in every part of the state to conserve water. We need regulators to rebalance water rules and enable voluntary transfers of water, and we must prepare for forest fires."

The blueprint said the state faces problems that include uncertain supplies from the Colorado River, scarcity because of drought, declining groundwater supplies, poor water quality, declining native fish species, floods and the risk of earthquakes that could disrupt supplies. It all comes as the population is projected to grow to 50 million by 2049 from the current 38 million.

The drought could push the state to move forward with changes to how it handles water, said Jay Lund, director of the Center for Watershed Sciences at the University of California, Davis.

"We have a history of having a lot of California inaction plans," Lund said. "We just had decades and decades of people making plans often without a lot of high-level buy-in at the political level."

The latest plan, he said, is "only 20 pages and it brings a level of focus to the broad waterfront that we haven't seen in past water plans that have been maybe narrower in scope and maybe not at a high level for policy discussions."

He added, "I think a drought is going to get everybody's attention. It brings a level of focus that we don't always see."

The five-year plan lays out steps for balancing the needs of people, farms, fish and the environment. The document said the proposed changes will ensure "more reliable water supplies, the restoration of important species and habitat, and a more resilient, sustainably managed water resources system ... that can better withstand inevitable and unforeseen pressures in the coming decades."

The state probably can't achieve all its stated ambitions, Lund said. "But if they get 25 percent of it, maybe half, that will be quite an accomplishment."

Cutting consumption 20 percent

So far, Brown has only asked for voluntary conservation of 20 percent to deal with the drought. The plan notes that in 2009 the state adopted the Water Conservation Act, which required a 20 percent reduction in urban per-capita water use by the end of 2020. That law also mandated promoting expanded development of sustainable water supplies regionally. It required agricultural water management plans and efficient water management practices for those supplying water for agriculture.

"Conservation and efficiency are also keys to reducing the energy needed to pump, transport, treat and deliver water -- an important action included in the state's Climate Change Scoping Plan for reducing greenhouse gas emissions," the blueprint said. "We must continue to build on our existing efforts to conserve water and promote the innovation of new systems for increased water conservation."

The Brown administration plans to ask the state's Legislature to expand funding for research on urban and agricultural water use efficiency, as well as the development of efficiency standards.

The plan also urged promoting local actions to cut water use. Those include "prohibiting certain types of wasteful water use," the blueprint said, including "watering hard surfaces such as sidewalks, walkways, driveways or parking areas; prohibiting outdoor watering during periods of rain; and not serving water to customers in restaurants unless specifically requested."

To deal with drought, the plan said, California will "revise operations to respond to extreme conditions." State agencies, working with federal counterparts, "will implement a series of administrative solutions ... to make water delivery decisions and propose options to address water quality and supply objectives in extreme conditions."

Asked to elaborate, Tim Moran, spokesman with the State Water Resources Control Board, cited the governor's drought declaration that said agencies will "expedite the processing of water transfers."

The state also will speed up funding for any water supply enhancement projects that can break ground this year, the governor's proclamation said, "and will explore if any existing unspent funds can be repurposed to enable near-term water conservation projects."

There also are limited cases where the state could suspend its protection law, the California Environmental Quality Act. Those include requests for transfers between the State Water Project and the federal Central Valley Project.

The drought proclamation said parts of the law could be "suspended on the basis that strict compliance with them will prevent, hinder, or delay the mitigation of the effects of the emergency."

Moving ahead with tunnel plan

Other goals named in the plan include managing and preparing for dry periods, expanding water storage capacity and improving groundwater management, providing safe water for all, and increasing flood protection.

The plan also talks about achieving "the co-equal goals for the Delta." There are competing needs including supplying water to farms and meeting federal requirements that in some cases block pumping to protect fish.

"In recent years, important fish populations have declined dramatically, leading to historic restrictions on water supply deliveries," the plan said. "Moreover, the current system relies on water flowing through a network of fragile levees from the northern part of the Delta to the pumps in the south, where two out of three fish trapped near the pumps die."

The levees also were not designed to withstand a large earthquake, "the probability of which is greater than 60 percent over the next 50 years," it said. "They are also vulnerable to major floods and rising sea levels."

The water blueprint advocates going forward with the delta plan. That controversial goal, which Brown backs, would build 30-mile tunnels underneath the delta to carry water underneath it to the south, cutting back on the current practice of running massive pumps in the south delta that disturb fish like the endangered delta smelt ([Greenwire](#), Oct. 8, 2013).

Jason Peltier, deputy general manager of the Westlands Water District, which supplies irrigation water to about 600,000 acres of farmland in the San Joaquin Valley, said his group supports moving ahead with that plan.

"If the drought highlights anything for us, it's that the infrastructure we're living with today is outdated," Peltier said. "We need more storage, we need more conveyance, we need to get on with preparing the infrastructure for the next generation, something we've done way too little on."

But he said his group is concerned less about increasing water storage and more about increasing access to water from the delta.

"Today it's drought, but over the last 20 years we've seen our water supply in Westlands, we've had water supply cutbacks of 40, 60, 90 percent," Peltier said. Much of that, he said, is due to environmental regulations.

"We can't get access to the water that we've already developed, the water that's up

north" in reservoirs, Peltier said. "Regulations keep from getting access to it." The proposed tunnels "could overcome the regulatory blockade," he said.

Some environmental groups have been critical of the Bay Delta tunnel plan, saying it won't do enough for the fish or the immediate region if state officials do not commit to reducing the amount of water exported from the delta to below current levels.

INVASIVE SPECIES:

New study finds native fish populations will rebound after lionfish suppression

Jessica Estepa, E&E reporter

Published: Tuesday, January 28, 2014

Reducing the numbers of lionfish can help native fish populations rebound, scientists said, and this new research that may help managers focus future efforts on battling the invasive species.

The lionfish invasion has exploded in the past decade and a half along the Atlantic Coast and in the Gulf of Mexico, leaving researchers, officials and anglers alike wondering what can be done to alleviate the damage ([*Greenwire*](#), Oct. 16, 2013). The creatures have a voracious appetite, devouring species native to those waters.

Some have sought to stem the lionfish's spread by removing them from the waters through methods such as spear hunting. Still, no research had been done about whether this would make a difference.

But a new [study](#) led by Stephanie Green of Oregon State University found that these efforts are effective.

Researchers first developed a model to estimate the predation of lionfish on native fish communities. The model predicted the maximum number of lionfish in an area before native fish populations would start to decline.

They then put the model to the test. Starting in 2009, they monitored the removal rates of lionfish in 24 different reef areas in the Bahamas.

The result: Depending on the reef, lionfish reductions of 75 to 95 percent would allow the native populations to rebound. In some cases, native fish would rebound by as much as 50 to 70 percent, even if lionfish weren't fully eradicated from an area.

"This is the first good news we've gotten since this invasion began," said Green, a research fellow at Oregon State.

The next step is figuring out how officials can use this information to prioritize their control efforts, she said. Since the data show targeted efforts can make a difference, managers can focus on which spots have certain species they want to protect or areas that are home to juvenile fish.

Additionally, each state has a different environment and different fish stocks, so mitigation efforts and the associated costs will vary.

"We want to get the biggest bang for our buck," she said.

NATIONAL PARKS:

Appeals court OKs oyster farm's plan to stay open during Supreme Court petition

Emily Yehle, E&E reporter

Published: Tuesday, January 28, 2014

Drakes Bay Oyster Co. will remain open while it asks the Supreme Court to take up its fight to operate within California's Point Reyes National Seashore.

The 9th U.S. Circuit Court of Appeals yesterday granted the oyster farm's request to continue operations for three more months in the hope that the Supreme Court will take its case. If the Supreme Court does take the case, the farm would be able to stay open while the justices consider it.

An attorney for the farm said it plans to continue to keep regular hours throughout the legal battle.

The oyster farm is challenging the Interior Department's 2012 decision to not renew its operating permit. The debate over whether the farm should operate in a potential wilderness area has raged for years, pitting local foodies and environmentalists against conservationists.

In order to grant the motion, the 9th Circuit had to find a "reasonable probability" that the Supreme Court would accept the case.

Attorneys for the farm say the case may attract the Supreme Court's attention because of a split between federal appellate circuits on the National Environmental Policy Act and administrative deference issues presented in the case ([*Greenwire*](#), Jan. 22).

The farm argues that the agency's decision to close it was an abuse of discretion, citing a 2009 appropriations bill that granted the National Park Service authority to renew its lease. Interior and the 9th Circuit say the bill gave then-Interior Secretary Ken Salazar considerable discretion.

DRINKING WATER:

Texas, Okla. reach water accord

Published: Tuesday, January 28, 2014

Oklahoma has agreed to let a North Texas water district once again pump water from Lake Texoma, despite the fact that the district's pumps sit just inside Oklahoma.

Texas Gov. Rick Perry (R) and Oklahoma Gov. Mary Fallin (R) signed the agreement, ending a nearly 200-year-old dispute over Texas' exact border with Oklahoma.

"The state of Oklahoma will not object to the location of the pumps, or the replacement of pumps with the same total capacity, within the state of Oklahoma," the memorandum says.

When the states redrew their boundaries in 2000, the North Texas Municipal Water District realized the new boundary bisected its water pumping station in Lake Texoma, where officials also detected a massive zebra mussel infestation. Texas is taking steps to redraw the boundary.

The water district has revamped its pumping system to filter out and kill the mussels so

that it can once again transport water (Jim Malewitz, [Texas Tribune](#), Jan. 27). -- **WW**

WATER POLLUTION:

La. drafts new plan to reduce Gulf 'dead zone'

Published: Tuesday, January 28, 2014

Louisiana has released a new plan to reduce water pollution in the Gulf of Mexico, but environmental groups say the proposal doesn't go far enough.

The state published a draft report listing new measures to reduce polluted water from agricultural runoff and other sources that flows into the Gulf each summer, depleting oxygen levels and creating a "dead zone."

The steps include diverting runoff from the Mississippi and Atchafalaya rivers and working with farmers to keep nutrients on farmland, state officials said.

"We have the partnerships in place to do this, but it will take time," said Carrie Castille, associate commissioner of public policy and governmental affairs at the Louisiana Department of Agriculture and Forestry.

Environmental groups said the plan contained few new proposals.

"It seems like a list of this is what we have been doing, but I don't see anything to move the ball forward," said Matt Rota, a senior policy director at the Gulf Restoration Network.

Louisiana is part of a multistate task force charged with reducing the dead zone to less than 1,930 square miles per year. In 2013, the polluted area stretched across 5,800 square miles (Amy Wold, [Baton Rouge Advocate](#), Jan. 27). -- **DB**

PERU:

U.N. court sets new maritime boundary, ending decades-long fishing fight

Published: Tuesday, January 28, 2014

A U.N. court yesterday set a maritime boundary between Peru and Chile, ending a decades-old dispute over fishing rights in the Pacific Ocean.

The International Court of Justice's ruling focused on roughly 14,670 square miles of fishing grounds with an annual catch worth an estimated \$200 million.

Though both countries laid claims to parts of the territory, analysts and lawmakers said the new boundary retains the status quo and won't affect the fishing industries in Chile or Peru.

Chilean President-elect Michelle Bachelet said most of Chile's "fishing occurs inside the area that the court ratified as belonging to our country."

The verdict is "not going to please anyone, but it's also not going to bring anyone to fits," either, said Peruvian historian Nelson Manrique.

Ties between the two countries, which fought a war with Bolivia for control of the Pacific Coast in the late 1800s, have improved dramatically in recent years. Chile and Peru's annual trade has grown to \$4.3 billion per year, up from \$500 million in 2006 (Bajak/Corder, [*AP/Washington Post*](#), Jan. 27). -- DB

ClimateWire -- Wed., January 29, 2014 -- [Read the full edition](#)

1. POLITICS: Obama tells sidelined lawmakers that climate change is 'a fact'

President Obama declared that the uncertainty around climate change is at an end, telling Congress "the debate is over" about its impacts on the Earth.

2. BUSINESS: Key to the future is plastics, but maybe not the kind

you imagine

Millions of barrels of crude oil was used to make 288 million metric tons of plastics in 2012, much of which was used only once and then thrown away. As the world tries to move away from fossil fuels, companies are trying to make plastics from renewable sources, using resources like corn, methane and bacteria.

TODAY'S STORIES

3. HEALTH: Black carbon found among emissions that can increase heart attacks -- study

4. FOOD SECURITY: Strategies for fisheries to adjust to climate change easy to conceive, hard to implement -- panel

5. COAL: Kemper carbon capture plant on schedule, but costs soar

6. COMMUNICATION: Knowledge can be power, especially when it comes to climate change

7. OVERSIGHT: IG cites improvement in State Department's climate funding

8. SHIPPING: Japanese researchers plan to create hybrid cargo ship

9. DROUGHT: Uganda contemplates developing drought-resistant coffee beans

10. FLOODS: Landslides caused by heavy rain kill 19 in Indonesia

11. PEOPLE: Teenage polar explorer highlights climate change

E&ETV's OnPoint

12. STATE OF THE UNION: Senate, House members react to president's climate and energy agenda

EnergyWire -- Wed., January 29, 2014 -- [Read the full edition](#)

1. STATE OF THE UNION: Obama pursues Steel City credentials in Marcellus gas country

With the State of the Union speech behind him, President Obama today is heading to a U.S. Steel Corp. plant near Pittsburgh, where he'll also stand on top of the region's sprawling natural gas formation. From U.S. Steel's Irvin Plant, rolled steel is shipped to the nation's expanding auto manufacturers. In and around Pittsburgh at the epicenter of a dramatic industrial collapse three decades ago, the president's visit comes as Democrats and Republicans heading into congressional midterm elections try to capitalize on the region's economic resurgence.

2. ELECTRICITY: 2 states feel the market heat as their deregulated neighbors reap rewards

Electric deregulation is getting a fresh look in two Great Lakes states as big energy users see power prices rise while rivals in neighboring states reap the benefits of competition. In Michigan and Indiana, two states hoping to revive energy-hungry manufacturing sectors, pro-competition groups are working to reinvigorate debate over electric restructuring more than a decade after California's electricity crisis and Enron Corp.'s collapse led many states to abandon the idea.

OIL, GAS AND COAL

3. POLICY: Trillion-dollar border bonanza in store thanks to Mexico oil reform -- economists

4. NATURAL GAS: Export opponents tie plant explosion to Md. LNG project

5. NATURAL GAS: Deep freeze prompts unusual spike in prices

6. PIPELINES: Avalanche cuts off road to Alaska town at end of oil line

7. NATIONS: Energy boom fuels violence in northern Kenya

ELECTRIC UTILITIES

8. SOLAR: In Ga., bill makes another run at market competition

9. UTILITIES: When the power's out, mobile apps keep information flowing

10. SECURITY: From energy to banking, bad cyber habits die hard

11. ENERGY MARKETS: Bipartisan FERC duo reaches out to Hill over licensing concerns

12. BUSINESS: Texas energy companies go to court over billion-dollar dispute

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